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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/648,906	08/25/2000	Gerald Davis Bohannon JR.	27798-00101	6971

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EXAMINER

RUDDOCK, ULA CORINNA

ART UNIT	PAPER NUMBER
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1771

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DATE MAILED: 01/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/648,906

Applicant(s)

BOHANNON, GERALD DAVIS

Examiner

Ula C Ruddock

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on 26 August 2002.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) 1,4-7 and 9-18 is/are pending in the application.
- 4a) Of the above claim(s) 10-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1,4-7 and 9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All   b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. The Examiner has carefully considered Applicant's amendment and accompanying remarks filed August 26, 2002. The claim objections have been overcome. It should be noted that, per Applicant's response, claims 1, 4, 5, 6, 7, and 9 are pending.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### **Claim Rejections - 35 USC § 103**

3. Claims 1, 4-7, and 9 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Romanek et al. (US 5,358,356) in view of Jacobsen, Jr. et al. (US 5,330,828), Molnar et al. (US 5,507,845), and Nosker et al. (US 5,789,477). Romanek et al. disclose an erosion control mat formed of a scrim having a lightweight web secured thereto (abstract). The lightweight web is preferably made up of unconsolidated fibers, which means that the fibers are not secured to one another (col 3, ln 25-27) and would inherently have some thickness. Applicant's filler is made of randomly dispersed loose fiber fill (page 10, line 1 of the present Application). Therefore, it should be noted that the Examiner is equating Romanek's lightweight web to the three-dimensional synthetic filler of the present Application. The lightweight web can be made of polyester fibers (col 3, ln 3-6). With regard to claim 9 of the present invention, UV stabilizers may be added to the materials making up the scrim and the web (col 4, ln 2-5). The final composite fabric formed of the scrim and lightweight web can be colored (col 3, ln 64-66). Romanek et al. fail to teach a second netting material, that the polyester fibers are crimped, and that the polyester is substantially recycled polyethylene terephthalate made of green soda bottle material. Romanek et al. also fail to

Art Unit: 1771

teach that the filler material has a resistance to compression value of about 0.210 to about 0.285 psi/gram of fiber and a percent recovery value of at least 90% following the application of a 0.5 psi compressive load for a period of 5 minutes.

Jacobsen, Jr. et al. (US 5,330,828) disclose a fiber mat which can be used as an erosion control device (col 1, ln 10-11). The fibrous mat can be produced with netting on one or both sides (col 7, ln 52-54). It would have been obvious to one having ordinary skill in the art to have employed Jacobsen's disclosure of a second netting on the erosion control mat of Romanek et al., motivated by the desire to obtain a mat with increased product strength.

Molnar et al. disclose plant sod mats that are especially effective for soil stabilization (abstract). The sod mat comprises a sod reinforcement and stable discrete fibers (col 3, ln 57-59). The discrete fibers can be polyethylene terephthalate and can also be crimped (col 13, ln 55-67). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have used Molnar's crimped polyethylene terephthalate fibers in the erosion control mat of Romanek et al., motivated by the desire to obtain an erosion control mat with increased root entanglement.

Nosker et al. disclose a composite building material from recycled materials (abstract). The polymer component can be composed of recycled PET (i.e. polyethylene terephthalate) from soda bottles (col 4, ln 47-55). With regard to claim 1 and 4, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have used the recycled PET of Nosker et al. as the polyester in the filler material of the erosion control mat of Romanek et al. motivated by the desire to reduce the amount of material that is incinerated or sent to a landfill.

Furthermore, it should be noted that Romanek et al. disclose that the scrim and lightweight web can be colored (col 3, ln 64-66). While Nosker et al. fail to specifically disclose the use of recycled green PET soda bottles, it would have been obvious to have made Nosker's soda bottles green, motivated by the desire to reduce the amount of green soda materials that are incinerated or sent to a landfill and by the desire to obtain a colored erosion control mat.

Although the combination of Romanek et al, Jacobsen, Jr. et al., Molnar et al., and Nosker et al. fail to disclose that the filler material has a resistance to compression value of about 0.210 to about 0.285 psi/gram of fiber and a percent recovery value of at least 90% following the application of a 0.5 psi compressive load for a period of 5 minutes, it is reasonable to presume that said percent recovery value is inherent to the erosion control mat of Romanek et al, Jacobsen, Jr. et al., Molnar et al., and Nosker et al. Support for said presumption is found in the use of like materials, crimped polyester fibers secured to a scrim. *In re Fitzgerald*, 205 USPQ 594. In addition, the presently claimed property of a resistance to compression value of about 0.210 to about 0.285 psi/gram of fiber and a percent recovery value of at least 90% following the application of a 0.5 psi compressive load for a period of 5 minutes would obviously have been present once the Romanek et al, Jacobsen, Jr. et al., Molnar et al., and Nosker et al. erosion control mat is provided. Note *In re Best*, 195 USPQ 433, footnote 4 (CCPA 1977).

### **Response to Arguments**

4. Applicant's arguments filed August 26, 2002, have been fully considered but they are not persuasive for the reasons set forth. Applicant argues that none of the references disclose that the

Art Unit: 1771

filler material comprises substantially post-consumer recycled polyester, as now required by claim

1. This argument is not persuasive because, as shown above, Nosker et al. disclose the use of recycled PET from soda bottles.

### Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ula C Ruddock whose telephone number is 703-305-0066. The examiner can normally be reached on Monday-Thursday.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the

Art Unit: 1771

organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

UCR *mck*  
December 30, 2002

  
TERREL MORRIS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700